

Exhibit No. 1Date 2-13-15Bill No. HB 85

**House Bill No. 85**  
**By Request of the Teachers' Retirement Board**

**Summary of Changes:**

HB 85 is the housekeeping bill for the Teachers' Retirement System. The bill primarily provides clarification of existing law regarding administration of TRS and makes changes required for ongoing compliance with IRS tax qualification standards.

Specific to IRS tax qualification, sections 25 and 33 are necessary to comply with the IRS requirement that differential pay to active duty military members be treated as earned compensation for pension purposes (HEART ACT Amendment). The exact language included in section 25 was agreed to in a voluntary correction plan approved by the IRS during the 2013 qualification letter process. Section 31 simply provides for a retroactive applicability date of January 1, 2009 for section 25 as required by the IRS.

The remaining amendments are directed at achieving the following:

**1. Sections 1-11. Amends current §19-20-705 - Correction of Errors**

- a. 19-20-705 will be repealed, and New Section 1-11 will be codified as a new Part of 19-20. These changes do not substantively amend the law or current practice related to provision of initial notice and a final determination, provision of notice of appeal rights, from whom recovery of overpaid benefits or unpaid contributions may be obtained or by what methods, etc.
- b. The bill establishes a new, specific statute of limitations applicable to actions to recover overpaid benefits and unpaid contributions, and does establish a new right of TRS to recover costs and fees arising from actions to recover overpaid benefits or unpaid contributions if the claim or defense pursued against TRS was frivolous or in bad faith.

**2. Section 12 Amends 19-20-401 - Creditable Service**

- a. Amends the description of each type of service purchase available under Part 4 merely to make the language consistent. Does not substantively change members' rights or TRS practice regarding service purchases.
- b. Adds subpart 19-20-401(5), which provides that redeposits and purchases of creditable service allowed under 19-20- Part 4 must be made prior to a first retirement and are not allowed during a period of reemployment and return to active member status under a second benefit. (This amendment will not prohibit purchases of service for active military service occurring during a period of active membership following a first retirement pursuant available under federal law - USERRA.)
  - i. Available Service Purchases (for reference)
    1. Out of State Teaching
    2. Leave Time
    3. Military, Red Cross or Merchant Marine Time

4. Private School Teaching
5. PERS Transfer
6. Extension Service Employment
7. Employment Related Injury (Work Comp)
8. Employment under the University System Retirement Pgm

**3. Sections 13-15 and 17-20.**

- a. Makes language consistent in all provisions for purchase of creditable service to "vested" member instead of "5 years of membership service"
- b. These revisions simply clarify rights; they do not change legal rights or obligations or modify how the provisions have routinely been applied by TRS.

**4. Sections 16. Amends §19-20-405 – Limit on Creditable Service That May be Awarded**

- a. Clarifies that the aggregate number of years of creditable service that may be purchased under all service purchase provisions in Part 4 is 5 years.
- b. These revisions do not change legal rights or obligations or modify how the provisions have routinely been applied by TRS.

**5. Section 21. Amends 19-20-427 – Redeposit of Contributions Previously Withdrawn**

- a. Clarifies that a member may not redeposit amounts previously withdrawn after retiring with TRS, even if the member subsequently returns to active member status. This coincides with change made to 19-20-401, as described above related to Section 12.

**6. Section 22 Amends 19-20-702 – Optional Allowances – Certain Period and Life Allowances**

- a. Clarifies that retiree who elects a joint and survivor annuity optional benefit and then subsequently divorces the spouse/joint annuitant may only "pop-up" to the normal form benefit (and possibly then make a new optional benefit election and designate a new joint annuitant) if the ex-spouse/joint annuitant has not been granted any ongoing or future right to receive any portion of the retiree's retirement benefit.

**7. Section 23. Amends 19-20-715 - Earned Compensation Limitations**

- a. Clarifies that the 10% cap applies to all years of compensation used to calculate average final compensation. Makes the provision applicable to both Tier one (3 years) and Tier 2 (5 years) members.

**8. Section 24. Amends 19-20-716 - Termination Pay**

- a. Removes reference to "3" consecutive years' salary in the calculation of average final compensation. Makes the provision applicable to both Tier one (3 years) and Tier 2 (5 years) members.

**9. Section 25. Amends 19-20-718 – Maximum Contribution Limitation**



- a. This provision is required to be included in plan documents. IRS qualification standards require differential pay to active duty military members be treated as earned compensation for pension purposes (HEART ACT Amendment). Exact language was agreed to in voluntary correction plan approved by IRS in 2013 qualification letter process, so language cannot be revised.

**10. Section 26. Amends 19-20-802 – Early Retirement**

- a. Change reference from "5 years of creditable service" to "vested."

**11. Section 27. Amends 19-20-804 – Adjustment of Allowance**

- a. Corrects current reference in provision regarding earnings limitations for disability retirees from "median salary" to "median average final compensation."

**12. Section 28. Amends 19-20-1001 Allowances for Death of Member Prior to Retirement**

- a. Provides for the same monthly benefits in lieu of a refund of contribution to the beneficiary(ies) of a deceased Tier Two member as are provided for Tier One members.

**13. Section 29. Amends 19-20-1101 – Withholding of Group Insurance Premium from Retirement Allowance**

- a. Clarify that payment of an amount withheld from a retiree's monthly benefit and remitted to the retiree's former employer to pay the premium for employer-sponsored retiree health benefits will only be sent only to the employer – it will not be sent to the insurance carrier.

**14. Section 30. Repeals 19-20-705 – Correction of Errors**

- a. This section has been redrafted in sections 1-11 of HB 85

**15. Section 31. Codification Instruction**

**16. Section 32. Effective Date**

- a. Makes the act effective July 1, 2015 to align changes to the plan terms with the beginning of the next fiscal year.

**17. Section 33. Retroactive Applicability Date**

- a. The HEART Act provision in section 25 is required to be retroactive to January 1, 2009 for IRS qualification purposes.

## Glossary of Retirement Terms

**"Accumulated contributions"** means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

**"Actuarial equivalent"** means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

**"Average final compensation"** means a member's highest average earned compensation, on which all required contributions have been made. Tier 1 = 3 consecutive highest. Tier 2 = 5 consecutive highest

**"Beneficiary"** means one or more persons formally designated by a member or retiree to receive a retirement allowance or payment upon the death of the member or retiree, except for a joint annuitant.

**"Benefit recipient"** means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

**"Creditable service"** is that service for which contributions were deducted from the member's compensation except that credit may not be awarded for those years of service for which contributions have been withdrawn but not replaced.

**"Date of termination"** or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.

**"Earned compensation"** means, except as limited by subsections (8)(b) and (8)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

### **Earned compensation does not include:**

- direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;
- professional membership dues;
- maintenance;
- housing;
- day care;
- automobile, travel, lodging, or entertaining expenses; or
- the imputed value of health, life, or disability insurance or any other fringe benefits;
- any noncash benefit provided by an employer to or on behalf of a member;
- compensation paid to a member from a plan for the deferral of compensation



- payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;
- incentive or bonus payments paid to a member that are not part of a series of annual payments;

**"Employer" means:**

- (a) the state of Montana;
- (b) a public school district,
- (c) the office of public instruction;
- (d) the board of public education;
- (e) an education cooperative;
- (f) the Montana school for the deaf and blind,
- (g) the Montana youth challenge program,
- (h) a state youth correctional facility,
- (i) the Montana university system;
- (j) a community college; or
- (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

**"Full-time service" means service that is:**

- (a) at least 180 days in a fiscal year;
- (b) at least 140 hours a month during at least 9 months in a fiscal year; or
- (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction

**"Joint annuitant"** means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

**"Member"** means a person who has an individual account in the annuity savings account. Unless otherwise specified, "member" refers to a tier one member or a tier two member.

**"Normal form"** or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

**"Normal retirement age"** means an age no earlier than 60 years of age.

**"Part-time service"** means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

**"Position reportable to the retirement system"** means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

**"Regular interest"** means interest at a rate set by the retirement board in accordance with 19-20-501(2). Currently 0.20%

**"Retirement allowance"** or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

**"Service"** means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

**"Termination pay"** means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

**"Tier one member"** means a person who became a member before July 1, 2013, and who has not withdrawn the member's account balance.

**"Tier two member"** means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.

**"Vested"** means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

**"Written application"** or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary.